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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,950	09/12/2003	Keri A. Holmgren	1058.2.1	8384

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EXAMINER	
BURNHAM, SARAH C	

ART UNIT	PAPER NUMBER
3636	

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/661,950	HOLMGREN ET AL.	
	Examiner	Art Unit	
	Sarah C. Burnham	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 March 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-13 and 20-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7-13 and 20-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 September 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being unpatentable over Rosen (5,549,354). Rosen discloses an apparatus (A) for thermally protecting an unoccupied child card seat (S), the apparatus comprising: a flexible thermal barrier (30) comprising: an absorbing layer (44) configured to absorb radiant energy on a first face of the flexible thermal barrier and, a reflecting layer (46) which "may be only a metalized film, having a highly reflective surface" (column 5, lines 63-64); and the flexible thermal barrier (30) shaped and sized to substantially cover and thermally protect an interior portion (26) of an unoccupied child car seat (S). An attachment mechanism, in the form of an elastic band (32), is configured to facilitate removal of the flexible thermal barrier (30) from the child car seat (S). The structure disclosed by Rosen is capable of being stored above or behind the child seat.

With respect to claim 2, the flexible thermal barrier (30) further comprises "an insulating liner" (column 7, line 36) configured to provide thermal resistance to the flexible thermal barrier.

With respect to claim 3, the flexible thermal barrier "can be folded or wadded up into a small compact unit when not in use" (column 5, claims 61-62).

With respect to claim 4, the flexible thermal barrier (30) "may be formed of a material so that it is capable of being readily washed" (column 7, lines 30-31).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen (5,549,354) in view of O'Sullivan (5,572,757). As disclosed above, Rosen reveals all claimed elements with the exception a detachable pouch with a water absorbent lining.

O'Sullivan teaches the use of a detachable pouches (54) made of absorbent terry cloth material for containing a temperature moderation device (52).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the pouches disclosed by Rosen, to be detachable as taught by O'Sullivan. Such a modification would enable the pouches to be positioned where they are most effective.

4. Claims 7 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen (5,549,354) in view of O'Sullivan (5,572,757) and in further view of Boyer et

al. (6,088,856). As disclosed above, Rosen, as modified, reveals all claimed elements with the exception of a pouch comprising waterproof material.

Boyer teaches the use of a waterproof pouch (14) for containing liquids located inside a support element.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to make the pouch elements (38)(38a) disclosed by Rosen, as modified, waterproof. Such a modification would prevent the condensation for the cool or warming element located inside the pouch from making the covering material wet.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen (5,549,354) in view of Karpinski (4,304,824). As disclosed above, Rosen reveals all claimed elements with the exception of the thermal barrier being a quilted blanket.

Karpinski discloses and insulation "quilt" that has a reflective outer layer (15) and an insulating inner layer made of pellets (16).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to quilt the thermal barrier disclosed by Rosen, as modified, as taught by Karpinski. Such a modification would create a softer apparatus and allow the apparatus to be comfortably placed under the seat occupant.

6. Claims 9 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen (5,549,354) in view of Schmitz (5,833,309). As disclosed above, Rosen, as

modified, reveals all claimed elements with the exception of a strap and a fastener for securing the flexible thermal barrier in the storage position and to the child seat.

Schmitz teaches the use of a securement device (20)(24) for securing a child car seat cover apparatus (10) in a storage position and for securing the child car cover apparatus to the child seat. Schmitz also reveals that in place of the illustrated one piece strap (20) a "two piece strap with an attaching hook and loop assembly" (column 6, lines 26-27) could be used to secure the apparatus in a storage position.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to include the securing means taught by Schmitz on the apparatus revealed by Rosen, as modified. Such a modification would enable the apparatus user to neatly store the apparatus as opposed to a wad.

Response to Amendment/Arguments

7. The amendment filed on March 10, 2005 has been considered in its entirety. Remaining issues are detailed in the sections above.

Applicant argues that Rosen does not discloses an apparatus designed to reflect sunlight and protect a car seat from getting hot and absorb thermal radiation to prevent a car seat from getting cold. The Examiner would like to point out that Rosen structurally presents two distinct layers, with the option of a third insulating liner. These layers consist of a reflecting layer (46), a fabric layer (44) and an optional insulating liner (column 7, line 36). The device (30), with its flexible nature, is clearly capable of being installed with either surface facing outward from the seat. Inherently, fabric, such as a

cotton polyester blend, absorbs radiation. By example, placing a piece of clothing made from a cotton polyester blend in the sunlight would cause the clothing to get warm, showing that is has absorbed radiation. Therefore, if the device (30) is positioned with the fabric layer (44) facing out, radiation will be absorbed warming the seat occupant. If the device (30) is positioned with the reflective side (46) facing out, radiation will be reflected helping keep the seat occupant cool. Therefore, the Examiner maintains that the device disclosed by Rosen meets the structural and functional limitations of the claims.

The arguments with respect to Vogt et al. are moot in view of the new interpretation of the Rosen reference set forth above. The current rejection does not depend on Vogt.

Applicant argues that the detachable nature of the pouches disclosed by O'Sullivan does not meet the limitations of the instant invention. The pouches (54) disclosed by O'Sullivan are detachable in that they can be removed from the containing sleeve (50). The claims of the instant invention do not require the pouches to be attached with a fastening device. Even if this were the case, containing sleeve (50) could be considered a fastening device. Therefore, the Examiner maintains that the removable nature of the pouches disclosed by O'Sullivan meet the "detachable" limitation of the instant set of claims. Furthermore, the pouches can be located where most effective because they can be slid along the length of the support device (20). Finally, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to provide a detachable pouch with heating and cooling capabilities is shown in the prior art. Such a pouch could obviously be applied to any device designed for supporting or blanketing a person to keep that person cool or warm. Furthermore, the detachable nature also allows the pouch to be cleaned separate from the entire device.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning with respect to the Boyer reference, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315 (after April 7, 2005 use (571) 272-6854). The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SCB
March 23, 2005